

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-v-

HARMEL S. RAYAT ET AL.,

Defendants.
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21-cv-4777 (LJL)

ORDER

LEWIS J. LIMAN, United States District Judge:

Plaintiff, the United States Securities and Exchange Commission, has moved the Court for an order compelling the production of communications with RenovaCare's counsel, Mr. Sierchio, but shared with Defendants Rayat, Bhogal, and Sidhu on the grounds that they are being improperly withheld on grounds of attorney-client privilege. Dkt. No. 209. Defendants oppose the motion. Dkt. No. 210.

The burden of establishing the essential elements of the attorney-client privilege rests with the party asserting it. *See United States v. King*, 868 F.3d 82, 86 (2d Cir. 2017). A proponent of privilege cannot meet the applicable burden by "mere conclusory or ipse dixit assertions." *In re Grand Jury Subpoena Dated Jan. 4, 1984*, 750 F.2d 223, 225 (2d Cir. 1984) (citation omitted).

The Court requires and will permit further briefing with respect to Defendants' claim of privilege for documents shared with Defendants Rayat and Sidhu, as well as with respect to Plaintiff's argument that the communications at issue were in Mr. Sierchio's role as director and not as counsel.

Accordingly, Defendants shall submit a memorandum of law, no more than ten pages, supporting their assertions of privilege, along with any supporting evidence in a form properly cognizable by the Court, no later than July 13, 2023. Plaintiff may submit a memorandum of law, no more than ten pages, and any supporting evidence properly cognizable by the Court, no later than July 20, 2023. Defendants may submit a reply memorandum of law, no more than five pages, no later than July 24, 2023. The briefing should be addressed to whether RenovaCare and Kalen Capital Corporation shared a common legal interest in the communications at issue or that sharing RenovaCare privileged information with Kalen would not destroy the privilege under *Music Sales Corp. v. Morris*, 1999 WL 974025 (S.D.N.Y. Oct. 26, 1999), including whether *Music Sales* is good law and applies on the facts here; Rayat and Sidhu received the communications at issue in their capacity as Kalen employees or agents; and Sierchio's

communications were in his role as outside counsel and for the purpose of communicating or providing legal advice. All evidence that any party wishes to rely upon shall be submitted with their opening papers. The Court will not entertain evidence or new arguments submitted in reply or surreply. The Court intends to then resolve the pending motion on the papers.

The Court will resolve the motion with respect to Bhogal on the briefing and evidence submitted by the parties in the letter motion and the response to the letter motion.

SO ORDERED.

Dated: July 6, 2023
New York, New York

A handwritten signature in black ink, appearing to read 'L. Liman', written over a horizontal line.

LEWIS J. LIMAN
United States District Judge